



The Medical Council of Tasmania

Our ref: AMA1949:08 (NRAIP)

24 December 2008

Ms Bronwyn Nardi
Chair
Practitioner Regulation Subcommittee
Of the Health Workforce Principal Committee

Via email: nraip@dhs.vic.gov.au

Dear Ms Nardi,

Re: Medical Council of Tasmania submission on the "Other matters for inclusion in Bill B"

Thank you for your email and associated consultation paper of 12 November 2008. We have provided our comments and suggestions using the same numbering system as provided within the consultation paper.

3.5 More flexible committee arrangements

3.5.1 Proposal – the Medical Council supports this proposal.

3.5.2 Proposal - it is not clear whether an assessment committee (for example) constituted to assist the board to determine whether to register or re-register a person (for whatever reason) will be constituted (under the new scheme) as an advisory committee. Currently the Medical Council utilises such assessment committees and they are statutory committees.

3.5.3 Proposal – the Medical Council supports the principle of this proposal, however, currently an assessment committee (for registration purposes) consists of three medical practitioners. That in effect, is an assessment by peers. The Medical Council considers that there should be at least members from the profession concerned on the panel.

3.5.4 Proposal - the Medical Council supports the principle of this proposal, however, it questions the practicality of this proposal in the smaller jurisdictions where it will not necessarily have a large pool of suitably qualified and experienced people to draw upon when determining the constitutions of boards, committees and panels.

3.5.5 Proposal - the Medical Council supports this proposal.

3.6 Further safeguards around delegations

3.6.1 Proposal - the Medical Council supports the principles outlined in this proposal.

4. Appointments to board (non-statutory) committees or (statutory) panels

Given what is outlined in this section of the consultation paper, it is assumed that the list of “...all existing members of jurisdictional boards and supporting hearing panels for the nine professions will, if they agree, be appointed to a list of persons from which national boards may form committees for a period of two years from commencement of the operation of the scheme...” will be prepared as soon as practicable following the formal establishment of the Agency Management Committee after 1 February 2009. However, before current members of the Medical Council and any other medical practitioner drawn from of a pool of Special Tribunal members etc., can make a decision as to whether they wish to be included on such a list, they will need to receive full details as to the terms and conditions, including remuneration, of the relevant positions. Without that information, they will not be able to make a fully informed decision.

4.1.1 Proposal – the Medical Council does “not” support this proposal. There needs to be clear guidelines on the selection of members of the board’s advisory committees. There are other mechanisms to assure the board has flexibility to determine the terms of appointment of members of advisory committees.

4.1.2 Proposal - the Medical Council supports Option 1, with the following qualification: Dot point 1 – agree; dot point 2 - disagree; and dot point 3 – agree, with the ability for re-appointment.

4.1.3 Proposal – there weren’t any options to select from.

5. Interaction of national scheme with other legislative schemes

It is noted that there is an expectation identified in the consultation paper that current Tribunal arrangements will continue to remain in force with all State and Territory laws applying (post 1 July 2010). It is imperative to note that with the repealing of the *Medical Practitioners Registration Act* 1996 (‘the Act’) the current Tribunal arrangements (for medicine and nursing) will cease to exist. Therefore, there will need to be clear provisions for this in the legislation for the new scheme.

5.2 Criteria

5.2.1 Proposal – the Medical Council supports this proposal.

5.2.2 Proposal – the Medical Council supports this proposal.

5.2.3 Proposal – the Medical Council supports this proposal.

- 5.2.4 Proposal** – the Medical Council supports this proposal. However, it is noted that no mention is made specifically to the Health Complaints legislation. It is noted, in Tasmania, the Health Complaints Commissioner and the Ombudsman are the same person.
- 5.2.5 Proposal** – the Medical Council supports this proposal.
- 5.2.6 Proposal** – the Medical Council supports this proposal.
- 5.2.7 Proposal** – the Medical Council supports this proposal.
- 5.2.8 Proposal** – the Medical Council supports this proposal. However, it is noted with the repealing of the Act, the power to obtain warrants (for medicine in Tasmania) ceases. Therefore, it will be important that such provisions are included in the legislation for the new scheme.
- 5.2.9 Proposal** – the Medical Council supports this proposal.
- 5.2.10 Proposal** – the Medical Council supports this proposal.

6. Trans-Tasman Mutual Recognition and the national scheme

- 6.1 Proposal** - Firstly, it should be noted that the *Trans-Tasman Mutual Recognition Act 1997* ('TTMRA') specifically excludes medical practitioners. As per previous comments in relation to the TTMRA (in an earlier submission), the Medical Council does not envisage a situation whereby the New Zealand government would support a deviation from that exclusion.

Conclusion

Given that the title of the consultation paper was "Other matters for inclusion in Bill B", it is not clear whether the following comments will automatically be considered when drafting Bill B or whether there is no intention to include them. However, the other matters identified from our current Act that appear to be omitted from the consultation paper include:

- Audit;
- Accounts;
- Annual Report;
- Establishment and constitution of the Tribunal (will be repealed with the repealing of the Act) – must also includes defined processes for powers and procedures of Tribunals, the conduct of formal inquiries including actions to be taken, costs and expenses of formal inquiry, notice of decision etc.;
- Compulsion (currently) of an Investigator or an assessment committee to require a medical examination (includes an examination of the physical, psychological and mental capacities of a person);
- Evidence of facts found in other proceedings;
- Inspectors (including their role and powers) or ensure a similar under the new scheme;

- Offences: practising whilst un-registered, making false claims or use of unauthorised titles have been addressed in the registration arrangements submission, however, other offences that need to be considered include: prescriptions (legislation to clearly dictate what is required of a practitioner when writing a prescription); failure to notify of civil claims; improper disposal of medical records; improper directions and inducements; offences of dishonesty; obstruction; offences relating to formal inquiries; and compellability of witnesses in formal inquiries;
- Medical practitioners' notices relating to fitness to practise (may be covered in the registration functions, however, needs to ensure that a registered medical practitioner who signs an order under a State or Territory *Mental Health Act* or an *Alcohol and Drug Dependency Act* is required (as soon as practicable) to give notice to the Board.
- Provision of information (to the Board) by medical services providers
- Service of documents (if not well covered under the relevant *Acts Interpretation Act*);
- Presumptions (as to constitution of the Board, a Tribunal, a committee or a panel); any resolution of the above; the presence of a quorum at any meeting of the above or the appointment of an investigator or inspector;
- Appropriation of fees, penalties and fines;
- No right of recovery by unregistered person (i.e. not entitled to remuneration for a medical service that he or she provided on his or her own account unless he or she was a registered medical practitioner at the time the service was provided);
- Punishment of conduct constituting an offence;
- Offences by bodies corporate; and
- Act does not prohibit certain practices (may be negated by virtue of the application of national registration).

The Medical Council of Tasmania thanks you for the opportunity to provide comments on the consultation paper. If you have any queries, please contact the Registrar of the Medical Council, Mrs Annette McLean-Aherne by telephone on 03.6233.5499, by facsimile on 03.6233.7986 or by email (registrar@medicalcounciltas.com.au).

Yours sincerely,



Dr Mike Hodgson AM
President